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7590 Anne Vochon Dougherty Esq IBM Corporation 3173 Cedar Road Yorktown Heights, NY 10598			EXAMINER SHANG, ANNAN Q	
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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OLIVIER CASILE, RICHARD S. CHERNOCK,
PAOLO DETTORI, FRANK A. SCHAFFA, and DAVID I. SEIDMAN

Appeal 2009-006415
Application 09/593,573
Technology Center 2400

Before ROBERT E. NAPPI, JOHN C. MARTIN,
and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 1-24 and 26.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part the Examiner's rejections of these claims.

INVENTION

The invention is directed to a method, system, and apparatus for cyclically broadcasting secondary content related to and during broadcasting of primary content. *See* Spec. 1-6. Claim 1 is representative of the invention and reproduced below:

1. A method for providing secondary content related to primary content in a broadcast stream comprising the steps of:
 - obtaining secondary content which relates to the main primary content;
 - creating a schedule for cyclic delivery of said secondary data content in a predetermined relation to the non-cyclic broadcasting of the primary content; and
 - cyclically delivering said secondary content based on said schedule.

REFERENCES

Fries US 6,317,885 B1 Nov. 13, 2001

REJECTION AT ISSUE

Claims 1-24 and 26 are rejected under 35 U.S.C. § 102(e) as being anticipated by Fries. Ans. 3-6.

² Claims 25 and 27-30 have been cancelled.

ISSUES

Claims 1-23

Appellants argue on pages 11-45 of the Appeal Brief that the Examiner's rejection of claims 1-23 is in error. More specifically, Appellants argue that Fries does not disclose "delivering the secondary content based on the schedule," as disclosed in independent claims 1 and 19. App. Br. 15 and 40. Dependent claims 2-18 and 20-23 depend upon claims 1 and 19, respectively, and contain similar limitations to claims 1 and 19.

Thus, with respect to claims 1-23, Appellants' contention presents us with the issue: Did the Examiner err in finding that Fries discloses delivering secondary content based on the schedule?³

Claim 24

Appellants argue on pages 45-48 of the Appeal Brief that the Examiner's rejection of claim 24 is in error. Appellants argue that Fries does not disclose a processing component, a buffering location, or a display for displaying both the primary and secondary content as recited in claim 24.

Thus, with respect to claim 24, Appellants' contention presents us with the issue: Did the Examiner err in finding that Fries discloses a processing component, a buffering location, and a display for displaying both primary and secondary content as recited in claim 24?

³ Appellants make additional arguments regarding claims 1-23. App. Br. 11-45. We do not reach these additional issues since the issue of whether Fries discloses delivering secondary content based on the schedule is dispositive of the case.

Claim 26

Appellants argue on page 48 of the Appeal Brief that the Examiner's rejection of claim 26 is in error. Appellants argue that Fries does not disclose "generating a request for retransmission of secondary content from said broadcast location." App. Br. 48.

Thus, with respect to claim 26, Appellants' contention presents us with the issue: Did the Examiner err in finding that Fries discloses generating a request for retransmission of secondary content from said broadcast location?

FINDINGS OF FACT (FF.)

1. Fries discloses a system that broadcasts both conventional television programming along with still images or information pages from content providers. Col. 3, l. 66-col. 4, l. 10.
2. The system consists of a cable head-end 22 that comprises an interactive information server 46 and an RF modulator which are connected to an external data source 48. Col. 4, ll. 3-13 and Fig. 1.
3. The interactive information server 46 receives data from the content providers. The content is then stored or buffered by the information server 46 for processing into a carousel 50 of multiple page images and metadata. Then, the information is injected into the local cable system. Col. 4, ll. 4-8; col. 19, l. 55-col. 20, l. 22; and Fig. 1.
4. A digital set-top box 28 receives the broadcasts from the cable head-end 22 where the conventional television programming or still images or information pages from content providers can be displayed on a television set 30. Col. 4, ll. 13-20 and Fig. 1.

5. In order to access the secondary content, a browser 62 is downloaded into a set-top box's 28 memory 82. When a user accesses the information service channel, the browser 62 provides a page image that contains links to additional information and the selected packet identification (PID) is written to the PID filter 90. Col. 6, ll. 35-55, col. 9, ll. 54-56, and Figs. 2-3.
6. The packet is then decoded by the MPEG2 Video Decoder 52, and displayed on a television set 30. Col. 4, ll. 13-20, col. 9, l. 56, and Figs. 2-3.

ANALYSIS

Claims 1-23

Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 1. Claim 1 recites "creating a schedule...and cyclically delivering said secondary content based on said schedule." Independent claim 19 recites similar limitations. Claims 2-18 and 20-23 depend upon independent claims 1 and 19. Appellants argue that there is nothing in Fries that discloses creating a schedule and cyclically delivering secondary content based on that schedule. App. Br. 15. We agree.

We disagree with the Examiner's finding that Fries' Carousel Server creates a schedule and delivers secondary content based on the schedule. Ans. 8. Fries discloses that the secondary data is delivered, not based upon a created schedule, but rather, based upon user selection of secondary data. FF 5. Thus, the reference does not meet the claim limitation and we will not sustain the Examiner's rejection of claims 1-23.

Claim 24

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 24. Appellants argue that the references do not teach a processing component, a buffer location, or a display for displaying both primary and secondary content. App. Br. 45-48. The Examiner has provided citations to the references disclosing where each of these limitations is found. Ans. 20-21. We agree with the Examiner for the reasons set forth below.

Appellants argue that Fries does not disclose a processing component that identifies secondary content. App. Br. 46. However, Fries discloses primary content that consists of programming from a local cable system and secondary content that consists of data received from content providers. FF 2, 3. Fries discloses an information server 46 that receives the secondary data from the content providers and injects it into the local cable system. FF 2, 3. When secondary data is requested by a user, the packet identification (PID) associated with that data is decoded at the set-top box, i.e., processed, by the MPEG2 Video Decoder 52. FF 6. Therefore, Fries' information MPEG2 Video Decoder 52 in the set top-top box corresponds to the claimed processing component.

Appellants additionally argue that while Fries discloses storing incoming signals, Fries does not teach buffering of the secondary content. App. Br. 46. However, when secondary data is requested by a user, packet identification (PID) associated with that data is written, i.e., stored, in the PID filter 90 of the set-top box. FF 5. Therefore, the secondary data is buffered in at least one buffer location.

Finally, Appellants argue that Fries does not disclose displaying both the primary and secondary content on a display component. App. Br. 47. However, Fries discloses a television set 30 that displays both conventional television programming and page data provided by the content providers. FF 4, 6. Since, as noted above, the local cable system is the primary content and data provided by the content providers is the secondary content, Fries discloses displaying both primary and secondary content on a television screen.

For the reasons shown above, Appellants' arguments that Fries does not teach the limitations found in claim 24 are not persuasive. Accordingly, we sustain the Examiner's rejection of claim 24.

Claim 26

Appellants' arguments have persuaded us of error in the Examiner's rejection of claim 26. Claim 26 recites "a request component for generating a request for retransmission of said secondary content from said broadcast location." Appellants argue that Fries does not contain a request for retransmission, as required by the claim. App. Br. 48. The Examiner cites portions of Fries where these limitations are believed to be found. Ans. 21. However, after review of these portions of the reference, we do not find where the reference discloses a request for retransmission of secondary content. As such, we do not sustain the Examiner's rejection of claim 26.

CONCLUSION

The Examiner erred in finding that Fries discloses delivering secondary content based on the schedule.

The Examiner did not err in finding that Fries discloses a processing component, a buffering location, and a display for displaying both primary and secondary content as found in claim 24.

The Examiner erred in finding that Fries discloses generating a request for retransmission of secondary content from said broadcast location.

SUMMARY

The decision of the Examiner to reject claims 1-23 and 26 under 35 U.S.C. § 102(e) is reversed.

The decision of the Examiner to reject claim 24 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv).

Appeal 2009-006415
Application 09/593,573

AFFIRMED-IN-PART

ELD

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